

**Thomas Jefferson to W. H. Torrance, June 11, 1815,
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TO W. H. TORRANCE J. MSS.

Monticello, June 11, 1815.

Sir, —I received a few days ago your favor of May 5th, stating a question on a law of the State of Georgia which suspends judgments for a limited time, and asking my opinion whether it may be valid under the inhibition of our constitution to pass laws impairing the obligations of contracts. It is more than forty years since I have quitted the practice of the law, and been engaged in vocations which furnished little occasion of preserving a familiarity with that science. I am far, therefore, from being qualified to decide on the problems it presents, and certainly not disposed to obtrude in a case where gentlemen have been consulted of the first qualifications, and of actual and daily familiarity with the subject, especially too in a question on the law of another State. We have in this State a law resembling in some degree that you quote, suspending executions until a year after the treaty of peace; but no question under it has been raised before the courts. It is also, I believe, expected that when this shall expire, in consideration of the absolute impossibility of procuring coin to satisfy judgments, a law will be passed, similar to that passed in England, on suspending the cash payments of their bank, that provided that on refusal by a party to receive notes of the Bank of England in any case either of past or future contracts, the judgment should be suspended during the continuance of that act, bearing, however, legal interest. They seemed to consider that it was not this law which changed the conditions of the contract, but the circumstances which had arisen, and had rendered

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its literal execution impossible; by the disappearance of the metallic medium stipulated by the contract, that the parties not concurring in a reasonable and just accommodation, it became the duty of the legislature to arbitrate between them; and that less restrained than the Duke of Venice by the letter of decree, they were free to adjudge to Shylock a reasonable equivalent. And I believe that in our States this umpirage of the legislatures has been generally interposed in cases where a literal execution of contract has, by a change of circumstances, become

impossible, or, if enforced, would produce a disproportion between the subject of the contract and its price, which the parties did not contemplate at the time of the contract.

The second question, whether the judges are invested with exclusive authority to decide on the constitutionality of a law, has been heretofore a subject of consideration with me in the exercise of official duties. Certainly there is not a word in the constitution which has given that power to them more than to the executive or legislative branches. Questions of property, of character and of crime being ascribed to the judges, through a definite course of legal proceeding, laws involving such questions belong, of course, to them; and as they decide on them ultimately and without appeal, they of course decide *for themselves*. The constitutional validity of the law or laws again prescribing executive action, and to be administered by that branch ultimately and without appeal, the executive must decide *for themselves* also, whether, under the constitution, they are valid or not. So also as to laws governing the proceedings of the legislature, that body must judge *for itself* the constitutionality of the law, and equally without appeal or control from its co-ordinate branches. And, in general, that branch which is to act ultimately, and without appeal, on any law, is the rightful expositor of the validity of the law, uncontrolled by the opinions of the other co-ordinate authorities. It may be said that contradictory decisions may arise in such case, and produce inconvenience. This is possible, and is a necessary failing in all human proceedings. Yet the prudence of the public functionaries, and authority of public opinion, will generally produce accommodation. Such an instance of difference occurred between the judges of England (in the time of Lord Holt) and the House of Commons, but

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the prudence of those bodies prevented inconvenience from it. So in the cases of Duane and of William Smith of South Carolina, whose characters of citizenship stood precisely on the same ground, the judges

in a question of *meum* and *tuum* which came before them, decided that Duane was not a citizen; and in a question of membership, the House of Representatives, under the same words of the same provision, adjudged William Smith to be a citizen. Yet no inconvenience has ensued from these contradictory decisions. This is what I believe myself to be sound. But there is another opinion entertained by some men of such judgment and information as to lessen my confidence in my own. That is, that the legislature alone is the exclusive expounder of the sense of the constitution, in every part of it whatever. And they allege in its support, that this branch has authority to impeach and punish a member of either of the others acting contrary to its declaration of the sense of the constitution. It may indeed be answered, that an act may still be valid although the party is punished for it, right or wrong. However, this opinion which ascribes exclusive exposition to the legislature, merits respect for its safety, there being in the body of the nation a control over them, which, if expressed by rejection on the subsequent exercise of their elective franchise, enlists public opinion against their exposition, and encourages a judge or executive on a future occasion to adhere to their former opinion. Between these two doctrines, every one has a right to choose, and I know of no third meriting any respect.

I have thus, Sir, frankly, without the honor of your acquaintance, confided to you my opinion; trusting assuredly that no use will be made of it which shall commit me to the contentions of the newspapers. From that field of disquietude my age asks exemption, and permission to enjoy the privileged tranquility of a private and unmeddling citizen. In this confidence accept the assurances of my respect and consideration.